

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT MYERS,

No. C 07-4905 SI

Plaintiff,

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

v.

MICHAEL ASTRUE, Commissioner, Social
Security Administration,

Defendant.

On September 21, 2007, plaintiff filed this *pro se* action seeking review of the Social Security Administration's determination that the agency made an overpayment in benefits. Plaintiff has been receiving benefits on his mother's record since January 1992, and as a disabled adult child since March 2004. *See* Ray Decl. ¶ 3(a); Ex. 1. By letter dated February 10, 2007, the Social Security Administration notified plaintiff that he had been sent two checks for July 2006, resulting in an overpayment of \$503.00. *Id.* ¶ 3(b); Ex. 2. The agency informed plaintiff that his monthly benefits would be reduced for a period of time until the overpayment was recouped. *Id.* ¶¶ 3(c)-(d); Ex. 3-4. Plaintiff filed a protest on September 20, 2007, and the agency reinstated plaintiff's monthly benefits to the pre-overpayment level until the agency could prepare a formal response. *Id.* ¶ 3(f); Ex. 6.

Defendant has filed a motion to dismiss this case for lack of jurisdiction because plaintiff has not yet exhausted his administrative remedies under the Social Security Act. In support of the motion, defendant has submitted the declaration of Rose Ray, which states that a final decision has not yet been issued in plaintiff's administrative appeal. *Id.* ¶ 3(g). Plaintiff has not filed an opposition to defendant's motion.

Under 42 U.S.C. § 405(g), the Court only has jurisdiction to review "final" decisions of the

1 Social Security Administration. Here, because plaintiff is currently appealing defendant's determination
2 that plaintiff received an overpayment, there is not a final decision for this Court to review. *See* 42
3 U.S.C. § 405(g) (providing for judicial review of "final decision" of Commissioner of Social Security);
4 *Califano v. Sanders*, 430 U.S. 99, 108 (1977) (explaining that judicial review of social security benefits
5 claims is limited to the Secretary's final decision made after a hearing).

6 Accordingly, the Court GRANTS defendant's motion and DISMISSES THIS ACTION
7 WITHOUT PREJUDICE. (Docket No. 16.). If plaintiff receives a final decision on his appeal that is
8 unfavorable, plaintiff may file a new action seeking review of that final decision.

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10 **IT IS SO ORDERED.**

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12 Dated: April 28, 2008



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SUSAN ILLSTON
United States District Judge